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10/534,027	05/06/2005	Estanislao Martinez Gomez	Q-87652	3379
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EXAMINER				
WALKER, NED ANDREW				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/534,027

Applicant(s)

MARTINEZ GOMEZ, ESTANISLAO

Examiner

NED A. WALKER

Art Unit

3781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 May 2008.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-20 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 06 May 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

Drawings

1. New corrected drawings in compliance with 37 CFR 1.84 and 37 CFR 1.121 are required in this application because:

The drawings are improper since they contain copy marks. The drawings must be reasonably free from erasures and must be free from alterations, overwriting, interlineations, folds, and copy marks. Refer to 37 CFR 1.84(e). See Figure(s) 1-3.

The drawings contain deficient line quality. All drawings must be made by a process which will give them satisfactory reproduction characteristics. Every line, number, and letter must be durable, clean, black (except for color drawings), sufficiently dense and dark, and uniformly thick and well-defined. Refer to 37 CFR 1.84(l). See Figure(s) 1-3.

The drawings are improper because they contain center lines. Views must not be connected by projection lines and must not contain center lines. Refer to 37 CFR 1.84(h). See Figure(s) 1-3.

Reference characters contain inverted commas and are therefore formatted incorrectly. Reference characters (numerals are preferred), sheet numbers, and view numbers must be plain and legible, and must not be used in association with brackets or inverted commas, or enclosed within outlines, *e.g.*, encircled. They must be oriented in the same direction as the view so as to avoid having to rotate the sheet. Reference characters should be arranged to follow the profile of the object depicted. Refer to 37 CFR 1.84(p(1)). See Figure(s) 2.

The drawing sheet numbering is formatted improperly. The drawing sheet numbering must be clear and larger than the numbers used as reference characters to avoid confusion. Refer to 37 CFR 1.84(t). See Figure(s) 1-3.

2. Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

Specification

3. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed. The title should include at least one technical or inventive feature set forth in the application.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 8 and 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims recite the limitation "the attachment location". There is insufficient antecedent basis for this limitation in the claim.

Claims 9-19 are rejected for incorporating the errors from their respective parent claim by dependency.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-3, 5, and 7-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Hanafusa et al. (US Pat. No. 5,405,039).

Regarding claims 1, 2, 5, 8, 9, and 19, Hanafusa et al. teaches an easy-open lid (10) for a container comprising: any one of a circular, elliptical or rectangular configuration with rounded vertices (FIG.1), a cut line (28), parallel and close to their perimeter for opening the lid with a punch-tear away ring tab (14) attached to the body of the lid by means of a rivet (29) and provided with a punching vertex (29) acting on said cut line, wherein the cut line is provided with a breakage segment (FIGS. 1-2, column 2 lines 55-60) with a curved path, having a curvature center coinciding with the rivet for attaching the ring tab to the body of the lid, such that said punch vertex is kept in place on the breakage segment after an accidental rotation of said ring tab throughout the process of handling the lid itself and the container which it is associated (FIGS. 1-3).

Regarding claims 2, 3, 16, and 17, one would glean from Hanafusa et al. that the amplitude of the curved breakage segment of the cut line is greater than 1 degree and ranges from 1 degree to 80 degrees (FIGS 1-5, column 2 lines 55-65).

Regarding claims 5 and 18, Hanafusa et al. teaches that the breakage segment (8) on the cut line is symmetrical with regard to the imaginary axis formed by the theoretical actuation point of the punch vertex of the ring tab, coinciding with the mid-point of the breakage segment, and the rivet for attaching the ring tab (FIGS. 1-4, column 2 lines 55-65).

Regarding claim 7, one of ordinary skill would glean from Hanafusa et al. wherein the curved breakage segment of the cut line, with a curvature center on the rivet, is joined the rest of the cut line by means of double, curved and counteropposing inflections or facilitating the opening of the lid along said line (FIGS 1-4, column 2 lines 55-65).

Regarding claims 10-15 and 20, one of ordinary skill would glean from Hanafusa et al. wherein the curved breakage segment is defined by a variation in the curvature of the cut line; the variation is one that comprises inward inflections on both sides of the curved breakage segment; the variation comprises a pair of offsetting, curved inflections on either side of the curved breakage segment; wherein the cut line is parallel to the perimeter of the lid; wherein the tab is attached to the lid at the attachment location by a rivet; the contour of the punching vertex matches the contour of the curved breakage segment; wherein the curved breakage segment comprises a center of curvature that generally coincides with the attachment location. (FIGS 1-4, column 2 lines 55-65).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. **Claims 4 and 6 are rejected under 35 U.S.C. 103(a) as being obvious over Hanafusa et al. (US Pat. No. 5,405,039).**

10. Regarding claims 4 and 6, Hanafusa et al. teaches substantially all the limitations of the claims except that the amplitude of the curved breakage segment is 20 degrees and the amplitude the curved breakage segment of the cut line is 10 degrees on each side of the theoretical actuation point of the punch vertex of the ring tab.

It would have been an obvious matter of design choice to one having ordinary skill in the art at the time the invention was made to select a certain amplitude deemed optimal, since applicant has not disclosed that this particular amplitude solves any stated problem or is for any particular purpose and it appears that the invention would perform equally as well with a different amplitude.

Response to Arguments

11. The examiner acknowledges the amendment to claims 1-7 and the newly added claims 8-20, as filed on May 29th, 2008.

12. Applicant's arguments, see amendment filed April 29th, 2008, with respect to the rejection of claims 1-18 under 35 U.S.C. §102(b) as being anticipated by de Baets (US Pat. No. 5,513,769) have been fully considered and are not persuasive. The examiner points that the claims recite "punching vertex *acting on* the cut line." The term "acting on" is sufficiently broad to constitute indirect contact. So as the punching vertex contacts the lid body, this force causes the cut line to break; therefore, the punching vertex is ultimately acting on the cut line. The Applicant has not adequately claimed direct contact between the features and therefore would not be able to overcome the rejection. Nevertheless, in light of the newly added claims, the rejection has been withdrawn and a better piece of art was found and applied under Hanafusa et al. (US Pat. No. 4,913,305). The new grounds for rejection have rendered the remainder of the applicant's arguments regarding the aforementioned rejection moot.

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

14. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to NED A. WALKER whose telephone number is (571)270-3545. The examiner can normally be reached on Monday - Friday 7:30 AM - 5:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

NW

/Anthony D Stashick/
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